IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2467 OF 2005.

Chhaganlal Kasturchand & Co. Ltd. . Petitioner.

V/s.

P.P. Sahalkar & ors. .. Respondent.

Shri F.B. Andhyarujina, Senior Counsel i/b Ms.Pallavi Divekar for the petitioner.

Shri Parag Vyas for the respondents.

CORAM : V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 3.10.2005.

P.C. :

. Rule returnable forthwith. Shri Vyas waives service on behalf of the respondents. Perused petition, affidavit and counter affidavit. Heard finally by consent of the parties.

2. The petitioner, pursuant to the notice of demand, approached the Income Tax Officer vide his letter-cum-application dated 1st September 2005 requesting him to stay and/or keep the tax demand in abeyance since the assessee was in the process of filing an appeal in the High Court.

3. The Income-tax Officer without deciding the application proceeded to attach bank account including the Demat account of the petitioner-firm.

4. The bank, with the attachment of bank account, appears to have remitted the amount i.e. credit balance in the sum of Rs. 13.31 lacs which was lying in the bank account of the petitioner, to the Income-tax Department.

5. The petitioner, at this stage, invoked writ jurisdiction of this Court to challenge order of attachment of the bank account together with Demat account of the petitioner- firm under section 226 (3) of the Income Tax Act.

6. During the course of hearing of this petition on 8.9.2005, it was pointed out by the learned Counsel for the petitioner that the appeal preferred by the petitioner against the orders of the ITAT being Appeal No. 500 of 2005 together with one more appeal (which is yet to be registered) are pending for admission. In view of this statement, this petition was ordered to be listed along with those appeals.

7. Today, this petition is placed before us along with one I.T. Appeal NO. 500/2005 challenging the order of the Tribunal from which tax demand for the assessment year in question arises. By consent of parties appeal was heard for admission. The same stands admitted for final

hearing after hearing the parties to the appeal.

8. At this juncture, it will not be out of place to mention that the learned Counsel for the petitioner was fair enough to give an offer to pay all tax arrears excluding interest- component within three months from today with immediate payment in the sum of Rs. 10 lac. However, learned Counsel for the Revenue, after taking instructions from the officer representing the department opposed this offer and did not accept the same.

9. In the above circumstances, the petition was required to be heard finally. It is not in dispute that the application dated 1.9.2005 (Annexure G) and/or prayer to keep the tax demand in abeyance has not yet been decided by the Income Tax Officer. The same is pending. It was obligatory on his part to decide the same. Since he failed to decide it, we think it proper to direct the Income Tax Officer to decide the application dated 1.9.2005 (Annexure G).

10. We make it clear that it would be open for the petitioner to bring additional material on record of the Income Tax Officer together with the subsequent events in support of the prayer for stay and/or to keep the tax demand in abeyance, within 3 days from today. The Income Tax Officer shall hear and decide the letter-cum-application dated 1.9,2005

(Annex.G) by a reasoned order considering the law laid down by this Court in the case of **KEC International Ltd. vs. B.R. Balakrishnan and ors. reported in (2001) 251 ITR 158** within one week thereafter.

11. As already mentioned hereinabove, amount lying at the credit of bank account in the sum of Rs. 13.31 lac has already been remitted by the bank to the Income Tax Officer. In that view of the matter, no useful purpose would be served by continuing attachment of the bank account. The same accordingly stands lifted.

12. So far as attachment of Demat account is concerned, the same shall continue for another two weeks from today. In the meanwhile, the Income Tax Officer is expected to decide the application dated 1st September 2005 (Annex.G) as directed herein within the time schedule. If he fails to decide the said application within said time frame, the attachment of Demat account also shall stand automatically vacated.

13. In the event of any adverse order, the same shall hold the field. In that circumstance, it would be open for the petitioner to avail any legal remedy as may be available to it.

. In the result, petition stands disposed of in terms of this order leaving all the rival contentions open.

. Rule is accordingly made absolute with no order as to costs.

(J.P. DEVADHAR,J.) (V.C. DAGA,J.)